



STATE OF IOWA
MASTER AGREEMENT
 Contract Declaration and Execution

EFFECTIVE BEGIN DATE: 08-25-2008
 EXPIRATION DATE: 09-30-2009
 PAGE: 1 of 5

VENDOR:

Med Media Inc
 6301 Grayson Rd

Harrisburg, PA 17111
 USA

VENDOR CONTACT:

RICHARD GURBA

PHONE: 717-657-8200

EMAIL:

EXT:

ISSUER:

ASHLEY SUPER

PHONE: 515-281-7073

EMAIL: ashley.super@iowa.gov

FOB FOB Dest, Freight Prepaid

Contract For: EMS DATA COLLECTION SYSTEM

The parties agree to comply with the terms and conditions on the following attachments which are by this reference made a part of the Agreement.

Attachment 1: General Terms and Conditions for service contracts posted at: http://das.gse.iowa.gov/terms_services.pdf

Attachment 2: Contractor's Response to Competitive Bid BD80300S260 dated June 27, 2003, on file with the Iowa Dept. of Administrative Services, General Services Enterprise.

Note: This is a Sole Source Contract requested by Terry Smith and Jody McNaughton at the Iowa Dept. of Public Health on October 14, 2008. Sole Source has been approved for a maximum of 5 each, individual annual periods, upon annual evaluation and approval by the Iowa Dept. of Public Health.

RENEWAL OPTIONS

FROM 10-01-2009 TO 09-30-2010

FROM 10-01-2010 TO 09-30-2011

FROM 10-01-2011 TO 09-30-2012

FROM 10-01-2012 TO 09-30-2013

AUTHORIZED DEPARTMENT

588 Public Health, Dept Of

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		STATE OF IOWA	
CONTRACTOR'S NAME (If other than an individual, state whether a corp., partnership, etc.) <i>Med Media, Inc.</i>		AGENCY NAME <i>Iowa Dept. of Administrative Services</i>	
BY (Authorized Signature) <i>Andrew D. Moyer</i>	Date Signed <i>12/18/08</i>	BY (Authorized Signature) <i>Jeanette Chupp</i>	Date Signed <i>Dec. 9, 2008</i>
Printed Name and Title of Person Signing <i>Andrew D. Moyer, President</i>		Printed Name and Title of Person Signing <i>Jeanette Chupp</i>	
Address <i>6301 Grayson Rd, MS113. Harrisburg, PA</i>		Address <i>1305 E. Walnut, Des Moines, Iowa</i>	



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LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
1	0.00000	91829		\$0.000000
				\$0.000000

Computer Software Consulting

Run Data Collection

Provision of Data Collection System of Pre-Hospital Emergency Medical Services in accordance with RFP Number BD80300S260 and Subsequent Amendments.

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Pricing shall not exceed \$27,500 annually.



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TERMS AND CONDITIONS**N60**

NET 60 DAYS

Delivery and Acceptance (cont)

D. Disposition of Rejected item - The vendor must remove at the vendor's expense any item rejected by the State. If the vendor fails to remove that rejected item, the State may dispose of the item by offering the same for sale, deduct any accrued expense and remit the balance to the vendor.

E. Testing After Delivery - Laboratory analysis of an item or other means of testing may be required after delivery. In such cases, vendors will be notified in writing that a special test is being made and that payment will be withheld until completion of the testing process.

Delivery and Acceptance

When an award has been made to a vendor and the purchase order issued, deliveries are to be made in the following manner.

A. Deliveries - All deliveries are to be made only to the point specified on the purchase order. If delivery is made to any other point, it shall be the responsibility of the vendor to promptly reship to the correct location. Failure to deliver procured goods on time may result in cancellation of an order or termination of a contract at the option of the State.

B. Delivery Charges - All delivery charges should be to the account of the vendor whenever possible. If not, all delivery charges should be prepaid by vendor and added to the invoice.

C. Notice of Rejection - The nature of any rejections of a shipment, based on apparent deficiencies disclosed by ordinary methods of inspection, will be given by the receiving agency to the vendor and carrier within a reasonable time after delivery of the item, with a copy of this notice to the General Services Enterprise - Purchasing. Notice of latent deficiencies which would make items unsatisfactory for the purpose intended may be given by the State of Iowa at any time after acceptance.

Termination-Non-Appropriation

Notwithstanding any other provision of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the State to appropriate funds, discontinuance or material alteration of the program for which funds were provided, then the State shall have the right to terminate this contract without penalty by giving not less than thirty (30) days written notice documenting the lack of funding, discontinuance or program alteration.

Vendor's Property

Notwithstanding provisions of "works made for hire", the vendor shall own all of its pre-existing methods, techniques, and processes, including software and documentation, that it brings to this engagement and shall own all enhancements to these methods, techniques and processes, including software and documentation, that are developed during the course of this engagement ("Vendor's Property") and (b) the vendor shall have the right to retain copies of all materials referred to in "works made for hire" in its files evidencing its services for the Information Technology Enterprise. The vendor agrees to grant the State/ITE a royalty-free, nonexclusive, nontransferable license to use, duplicate and disclose the Vendor's Property for the purposes contemplated by this Agreement.

Works Made for Hire

All information, reports, studies, flow charts, diagrams, and other tangible and intangible material of any nature, whatsoever, produced by the vendor for delivery to the State during the course of this engagement and all copies of any of the foregoing shall be the sole and exclusive property of the State, and all such material and all copies shall be deemed "works made for hire" of which the State shall be deemed the author.

To the extent that the materials are not deemed "works made for hire", the vendor hereby irrevocably grants, assigns, transfers, and sets over to the State all legal and equitable right, title, and interest of any kind, nature or description in and to the materials and the vendor shall be entitled to make absolutely no use of any of the materials except as may be expressly permitted in this Agreement.

Confidentiality

Each party may have access to confidential information of the other party to the extent necessary to carry out their responsibilities under the Agreement and Software License Agreement. Such confidential information shall, at all times, remain the property of the party disclosing the confidential information. Each party shall preserve the confidentiality of the confidential information disclosed or furnished by the other party, and shall maintain procedures for safeguarding such confidential information. Each party shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement.

Miscellaneous

The terms and provisions of this contract shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with this contract shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa. If however, jurisdiction is not proper in Polk County District Court, the action shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, providing that jurisdiction is proper in that forum. This provision shall not be construed as waiving any immunity to suit or liability, which may be available to the State of Iowa.

If any provision of this contract is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

Performance Monitoring

For all service contracts, the requirements of Iowa Code sections 8.47 shall be incorporated into final terms and conditions of the contract.

Public Records

The laws of the State of Iowa require procurement records to be made public unless exempted by the Code of Iowa.

Independent Contractor



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The vendor is an independent contractor performing services for the State of Iowa, and as such shall not hold itself out as an employee or agent of the State.

Hazardous Material

All packaging, transportation, and handling of hazardous materials shall be in accordance with applicable federal and state regulations including, but not limited to, the Material Safety Data Sheet provision of O.S.H.A. Hazard Communication Standard 29CFR 1910.1200, and Iowa Administrative Code, Chapter 567.

Records Retention

The vendor shall maintain books, records, and documents which sufficiently and properly document and calculate all charges billed to the State of Iowa throughout the term of this Agreement for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. The vendor shall at, no charge, permit the Auditor of the State of Iowa, or any authorized representative of the State (or where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government) to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records, or other records of the vendor relating to orders, invoices, or payments documentation or materials pertaining to this Agreement.

Taxes

The State of Iowa is exempt from the payment of Iowa sales tax, motor vehicle fuel tax and any other Iowa tax that may be applied to a specified commodity and/or service. Contractors performing construction activities are required to pay state sales tax on the cost of materials. The Iowa Department of Revenue exemption letter will be furnished to a vendor upon request.

Anti-Trust Assignment

For good cause and as consideration for executing this purchase order, the vendor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa, relating to the particular goods or services purchased or acquired by the State of Iowa pursuant to the using State of Iowa agency.

Warranty

The vendor expressly warrants that all goods supplied shall be merchantable in accordance with the Uniform Commercial Code, Section 2-314 and the Iowa Code, Section 554.2314.

Assignment

Vendors may not assign contracts or purchase orders to any party (including financial institutions) without written permission of the General Services Enterprise - Purchasing.

Nondiscrimination

The vendor is subject to and must comply with all federal and state requirements concerning fair employment and will not discriminate between or among them by reason of race, color, religion, sex, national origin or physical handicap.

Immunity of State/Fed Agencies

The vendor shall defend and hold harmless the State and Federal funding source for the State of Iowa from liability arising from the vendor's performance of this contract and the vendor's activities with subcontracted and all other third parties.

Indemnification

To the extent that goods are not manufactured in accordance with the State's design, the vendor shall defend, indemnify and hold harmless the State of Iowa, the State's assignees, and other users of the goods from and against any claim of infringement of any Letter Patent, Trade Names, Trademark, Copyright or Trade Secrets by reason of sale or use of any articles purchased hereunder. The State shall promptly notify the vendor of any such claim.

Title to Goods

The vendor warrants that the goods purchased hereunder are free from all liens, claims or encumbrances.

Subcontractors

The successful vendor shall be responsible for all acts and performance of any subcontractor or secondary supplier that the successful vendor may engage for the completion of any contract with the State. A delay that results from a subcontractor's conduct, negligence or failure to perform shall not exempt the vendor from default remedies. The successful vendor shall be responsible for payment to all subcontractors and all other third parties.

Force Majeure

Force majeure includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party affected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. These provisions of force majeure also apply to subcontractors or suppliers of the Vendor. Force majeure does not include financial difficulties of the Vendor or any associated company of the Vendor, or claims or court orders that restrict the Vendor's ability to deliver the goods or services contemplated by this Agreement. Neither the Vendor nor the State shall be liable to the other for any delay or failure of performance of this Agreement caused by a force majeure, and not as a result of the fault or negligence of a party.

Remedies upon Default

In any case where the vendor has failed to deliver or has delivered non-conforming goods and/or services, the State shall provide a cure notice. The notice to cure shall state the maximum length of time the vendor has to cure. If after the time period stated in the notice to cure has passed, the vendor continues to be in default, the State may procure goods and/or services in substitution from another source and charge the difference between the contracted price and the market price to the defaulting vendor. The State's Attorney General shall be requested to make collection from the defaulting vendor.

Terms & Conditions Service



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The parties agree to comply with the terms and conditions on the following web site which are by this reference made a part of the Agreement.

General Terms and Conditions for service contracts are posted at: http://das.gse.iowa.gov/terms_services.pdf

State of Iowa Service Contract

Contract Number CT2871

**CONTRACT FOR MED MEDIA, INC. TO PROVIDE A EMS DATA
COLLECTION SYSTEM**

BETWEEN

IOWA DEPARTMENT OF PUBLIC HEALTH (IDPH)

AND

MED MEDIA, INC.

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- D RFP BD80300S260 and its amendments
- E MED MEDIA's Proposal in response to RFP BD80300S260 including answers to questions.

SECTION 1. IDENTITY OF THE PARTIES

- 1.1. The Iowa Department of Public Health (IDPH) is authorized to enter into this Contract. IDPH's address is: 321 East 12th Street, 5th floor, Lucas Building, Des Moines, Iowa 50319-0075.
- 1.2. MED MEDIA, INC.'s corporate address is: 2401 Park Drive, Suite 200, Harrisburg, PA 17110.

SECTION 2. PURPOSE

The purpose of this CONTRACT is to provide a data collection system of pre-hospital emergency medical services (EMS Data Collection System) to compliment the Iowa Department of Public Health's patient data capture and reporting system in accordance with RFP BD80300S260, its amendments and the contractor's proposal in response to the RFP. See Section 5 for deliverables.

SECTION 3. DURATION OF CONTRACT

The term of this Contract shall be **August 20, 2003**, through **August 31, 2004**, unless terminated earlier in accordance with the Termination section of this Contract. The IDPH shall have the option to renew this Contract for up to **a possible additional 2 one year extensions** by giving MED MEDIA, INC. written notice of the extension decision at least sixty (60) days prior to the expiration of the initial term or renewal term.

SECTION 4. DEFINITIONS

The following words shall be defined as set forth below:

- 4.1 **RFP** shall mean Request for Proposal.
- 4.2 **CONTRACTOR** shall mean MED MEDIA, INC.
- 4.3 **ADP** shall mean Automated Data Processing System.
- 4.4 **PC** shall mean Personal Computer.
- 4.5 **IDPH** shall mean the IOWA DEPT. OF PUBLIC HEALTH.
- 4.6 **IDPH/IM** shall mean the IOWA DEPT. OF PUBLIC HEALTH/Information Management Bureau.
- 4.7 **CFR** shall mean Code of Federal Regulations.
- 4.8 **LAN** shall mean Local Area Network
- 4.9 **USDA** shall mean United States Department of Agriculture.

SECTION 5. SCOPE OF SERVICES - Contract Deliverables

5.0 INTRODUCTION

Med Media shall provide to IDPH a Web-based EMS Data Collection and Reporting System to support the IDPH Pre-Hospital Data Management. Mandated by Iowa Code and Administrative Rule, IDPH collects pre-hospital patient data from all Emergency Medical Services (EMS) providers certified to operate within the State of Iowa. The information is critical to analyze outcome data, improve training programs, and make data easily accessible to policy makers, researchers and other stakeholders.

5.1 REQUIRED DELIVERABLES:

At a minimum, the following tasks and deliverables must be developed, performed, delivered and / or otherwise provided as described in Med Media's Proposal in response to RFP BD80300S260:

1. The system must be web-based and available from any computer that is connected to the Internet.
2. The system must operate efficiently with all levels / types of Internet connections.
3. The system must collect analyze and report pre-hospital emergency medical service patient data.
4. The system must ensure a secure electronic exchange of information between all EMS providers and the IDPH.
5. The system must have the capacity to import the existing central site pre-hospital data. The system, at a minimum, should accept imports from Microsoft Access and ODBC compliant software.
6. The system must be configurable to allow specified entities access to limited parts of the database.
7. The system must provide standard reports as well as allowing the user to easily create ad hoc queries.
8. The system must have the capacity to be customized to collect additional data points if needed.
9. System must be HIPAA compliant. Ref: www.state.ia.us/government/hipaa/

5.2 SYSTEM DEVELOPMENT

The Contractor shall develop and obtain acceptance of a User Authentication Security Plan. The User Authentication Security Plan must include, at a minimum, the following elements:

1. Require passwords for each user that will expire on a staggered schedule determined by the State that can be changed at any time by the user (or by appropriate State or contractor management personnel);

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2. Unique log-on for each user;
3. Method of restricting of aggregate data level file/table, record/row, and field/attribute to specific users and/or groups of users with common access rights as specified by the State;
4. Method of restricting of file/table, record/row, and field/attribute to specific users and/or groups of users with common access as specified by the State;
5. Procedures for safeguarding the system from unauthorized modifications to the application programs and the data contained in the application.

5.3. TESTING AND ACCEPTANCE

- a. The Contractor shall include in the specified system testing and the analysis of the results. System implementation will begin following the satisfactory completion of system testing as determined by IDPH;
- b. The Contractor shall develop and obtain acceptance of User Acceptance Test Plan to include test scenarios for all defined business rules and processes;
- c. The Contractor shall complete performance analysis and testing to develop an initial benchmark of system performance; d. The Contractor shall review system test results; the Contractor shall also correct and re-test components that tested unsatisfactorily;
- e. The Contractor shall assist the State's personnel and/or authorized agents during User Acceptance Testing (for example; execute routine periodic updates, be available to answer questions and research issues, and so forth);
- f. The Contractor shall correct problems found during User Acceptance Testing and re-introduce the corrected component into the system for re-testing;
- g. The Contractor shall perform IDPH approved backup and recovery procedures defined in the Backup and Recovery Plan to verify accuracy of system backup and restore;
- h. The Contractor shall correct problems found during the testing of the Backup and Recovery Plan and re-introduce the corrections into the plan for retesting and IDPH approval.
- i. The contractor shall provide in their proposal the cost of an optional independent "verified and validated" certification performed by Microsoft Corporation.

5.4 TRAINING, DOCUMENTATION, AND IMPLEMENTATION

- a. For the Training and Implementation Task, the contractor shall, at a minimum:
 1. Deliver onsite training;
 2. Certify training is completed;

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3. Provide an electronic version of the formal, customized training classes and associated class documentation to the State.
- b. The Contractor shall develop complete user documentation and user manuals that shall, at a minimum:
 1. Be in a format that facilitates updating, including use of 8 1/2" x 11" pages in three-ring (3) binder form, pages numbered within each section, and a revision date on each page;
 2. Be available on-line via help screens with a IDPH acceptable formatted;
 3. Be written and organized so that users not trained in data processing can learn from reading the documentation how to access the system, perform queries, create reports and utilize contract templates and other tool sets available to them;
 4. Contain a table of contents and an index;
 5. Have descriptions of error messages and the necessary steps to correct such errors;
 6. Contain abbreviations, which are consistent throughout the documentation;
 7. Contain a section describing all pre-defined queries and reports; and
 8. Contain instructions for creating queries and reports.

5.5 SYSTEM SUPPORT

- a. All items delivered by the Contractor must meet the requirements, specifications and functions identified herein.
- b. The Contractor shall warrant "all" items to conform to Federal and State of Iowa laws, regulations, standards, and policies.
- c. The Contractor must warrant that the system and software delivered shall be free from defects and capable of accurately performing all requirements for one (1) year. During the one (1) year warranty period, the Contractor must correct errors and omissions discovered in the design, installation, implementation and operation of the system.
- d. The Contractor must warrant that the developed and delivered system shall not infringe any right of, and shall be free of any claim of any third party or entity based on patent, copyright, trade secrete, or other intellectual property right. This warranty shall survive termination of the contract.
- e. The Contractor shall be available on an as-needed basis via the phone or onsite depending on the severity of the issue requiring assistance.
- f. Contractor shall acknowledge receipt of problem within a 4-hour period following notification that a problem exists.

5.6 INSTALLATION

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Med Media shall be responsible for installing and certifying that the proposed solution is ready to begin acceptance testing.

5.7 PERFORMANCE

The proposed system and software which is developed and delivered must perform as a system with hardware and/or software currently owned and operated by the Department of Public Health, and shall, at a minimum, operate 24 hours per day 7 days per week, accurately process, transfer, sequence data or otherwise interact with the other components or parts of IDPH applications.

5.8. SECURITY REGULATIONS

The delivered solution must be developed in accordance with State of Iowa and Federal regulations and guidelines related to security, confidentiality, and auditing. Data must not leave the borders of the United States.

5.9 MANDATORY SYSTEM REQUIREMENTS

- A. The proposed system must utilize one of the following operating systems:
 - Microsoft Windows 98 Second Ed
 - Microsoft Windows XP Prof Ed
 - Microsoft windows ME
 - Microsoft Windows 2000
 - Microsoft NT
- B. Data may reside on the IDPH SQL server or the contractor may host the data if certain conditions are met, including but not limited to:
 - 1. All data is the property of the State of Iowa and must be delivered intact by the contractor in case of insolvency or if acquired by another entity, if said entity does not agree, meet or exceed original contract terms.
 - 2. Data will be exported to IDPH at least biweekly or monthly in an agreed upon format, such as Microsoft Excel, Access, or comma delimited file.
 - 3. CONTRACTOR will deliver data to IDPH within 24 hours after any ad hoc data request.
- C. Application must function on a TCP / IP Network.

5.8. MED MEDIA, INC.'s Responsibilities for Deliverables

MED MEDIA, INC. will be fully responsible for completion of all contract deliverables as described in this section.

5.9. Proposed Project Schedule

The final project schedule will be developed during project initiation and planning and will be defined by the approved "Final Work plan and Schedule".

Task	Start Date	End Date
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State of Iowa Service Contract

Awarded Contract	8/25/03	9/1/03
Submit existing data dictionary and business rules comparison to IDPH	9/2/03	9/4/03
Meet with IDPH data committee as needed	9/5/03	9/18/03
User Training	10/31/03	11/27/03
Review data dictionaries and business rules	9/5/03	9/18/03
IDPH review of on-line system and technical writings	11/5/03	11/18/03
Release Candidate Review	12/9/03	12/17/03
Design Iowa WebCUR graphical user interface and skin	9/2/03	9/30/03
Analysis of final data elements with WebCUR library and SQL structures	9/19/03	9/25/03
Data element integration and design in WebCUR skin	9/19/03	10/30/03
IDPH Revisions	11/19/03	12/08/03
System Live	12/29/03	12/30/03
Technical Writing of data dictionary and user manuals	9/26/03	11/4/03
Iowa WebCUR system testing	10/20/03	11/26/03
IDPH Revisions	11/19/03	12/8/03
Release candidate review	12/9/03	12/26/03

5.10. State Review and Approval for Deliverables

MED MEDIA, INC. will identify and provide all deliverables to IDPH in the required format and number of copies. In general deliverables will be submitted in Draft and Final versions.

Unless otherwise specified in this contract, the states require ten (10) working days for review and approval of deliverables. After the 10 day period, either the deliverable must be accepted or specific written feedback provided on items which must be modified or added to cause the deliverable to be approved. Corrected deliverables must be submitted by MED MEDIA within 10 days. The states will have 10 days to review the modifications to determine if the original noted deficiencies were corrected. During state review periods, if no feedback is provided, the deliverable will be considered accepted.

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Both MED MEDIA and IDPH agree that for the purposes of efficiency and cost savings, deliverable feedback and rejection/acceptance can be conducted via e-mail and does not need to be done via a paper/signature process.

5.11. MED MEDIA, INC.'s PROJECT MANAGER

MED MEDIA, INC. shall designate one (1) person to act as the primary point of contact for project management duties. This role's duties shall include:

- . Coordinate and manage all project activities and timelines beginning with contract execution and ending with completion.
- b. Ensure proper training is provided to the key IDPH personnel and system analysts supporting the new EMS Data Collection System.
- c. Coordinate the work of state office and local staff in implementation tasks (training and coaching, facility preparation, and staff pre-implementation assessment) and the implementation activities.
- d. Serve as an ex-officio member of the IDPH Steering Committee and advise the committee on all matters related to the project's status, including scheduling of project activities and resource usage.

SECTION 6. COMPENSATION

6.1. Pricing. IDPH will withhold 10% of the cost of each deliverable until the system is accepted for production use by the State. **Total reimbursement to Med Media for all deliverables under this contract is not to exceed \$150,000.00**

6.2. Billings. MED MEDIA, INC. shall submit, on a **monthly basis for completed and approved deliverables**, an invoice for services rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The IDPH shall pay all approved invoices in arrears and in conformance with Iowa Code section 421.40 and 701 Iowa Administrative Code 201.1(2). The IDPH may pay in less than sixty (60) days, as provided in Iowa Code section 421.40. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 421.40.

Unless otherwise agreed in writing by the parties, MED MEDIA, INC. shall not be entitled to receive any other payment or compensation from the State for any goods or services provided by or on behalf of MED MEDIA, INC. under this Contract. MED MEDIA, INC. shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

6.3. Delay of Payment Due to MED MEDIA, INC.'s Failure. If the IDPH in good faith determines that MED MEDIA, INC. has failed to perform or deliver any service or product as required by this Contract, MED MEDIA, INC. shall not be entitled to any compensation under this Contract until such service or product is performed or delivered. In this event, the IDPH may withhold that portion of MED MEDIA, INC. compensation, which represents payment for service or product that was not performed or delivered.

- 6.4. Set-Off Against Sums Owed by MED MEDIA, INC.** In the event that MED MEDIA, INC. owes the State any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any lack the State may set off the sum owed to the State against any sum owed by the State to MED MEDIA, INC. in the State's sole discretion, unless otherwise required by law. MED MEDIA, INC. agrees that this provision constitutes proper and timely notice under the law of setoff.

SECTION 7. TERMINATION

- 7.1. Immediate Termination by the IDPH.** The IDPH may terminate this Contract for any of the following reasons effective immediately without advance notice:
- 7.1.1.** In the event MED MEDIA, INC. is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
 - 7.1.2.** The IDPH determines that the actions, or failure to act, of MED MEDIA, INC., its agents, employees or sub contractors have caused, or reasonably could cause, a client's life, health or safety to be jeopardized;
 - 7.1.3.** MED MEDIA, INC. fails to comply with confidentiality laws or provisions;
 - 7.1.4.** MED MEDIA, INC. furnished any statement, representation or certification in connection with this Contract or the RFP, which is materially false, deceptive, incorrect or incomplete.
- 7.2. Termination for Cause.** The occurrence of or any one or more of the following events shall constitute cause for the IDPH to declare MED MEDIA, INC. in default of its obligations under this Contract.
- 7.2.1.** MED MEDIA, INC. fails to perform, to the IDPH's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by MED MEDIA, INC.;
 - 7.2.2.** The IDPH determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;
 - 7.2.3.** MED MEDIA, INC. fails to make substantial and timely progress toward performance of the Contract;
 - 7.2.4.** MED MEDIA, INC. becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; MED MEDIA, INC. terminates or suspends its business; or the IDPH reasonably believes

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MED MEDIA, INC. has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

7.2.5. MED MEDIA, INC. has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract; or

7.2.6. MED MEDIA, INC. has engaged in conduct that has or may expose the IDPH to liability, as determined in the IDPH's sole discretion.

7.2.7. MED MEDIA, INC. has infringed any patent, trademark, copyright, or any other intellectual property right.

7.3. Notice of Default. If there is a default event caused by MED MEDIA, INC., the IDPH shall provide written notice to MED MEDIA, INC. requesting that the breach or noncompliance be remedied within the period of time specified in the IDPH's written notice to MED MEDIA, INC.. If the breach or noncompliance is not remedied by the date of the written notice, the IDPH may either:

7.3.1. Immediately terminate the Contract without additional written notice; or,

7.3.2. Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

7.4. Termination Upon Notice. Following **60** days' written notice, the **IDPH** may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to MED MEDIA, INC.. Following termination upon notice, MED MEDIA, INC. shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to the **IDPH** up to and including the date of termination.

7.5. Termination Due to Lack of Funds or Change in Law. The **IDPH** shall have the right to terminate this Contract without penalty by giving sixty (60) days' written notice to MED MEDIA, INC. as a result of any of the following:

7.5.1. Adequate funds are not appropriated or granted to allow the **IDPH** to operate as required and to fulfill its obligations under this Contract;

7.5.2. Funds are de-appropriated or not allocated or if funds needed by the **IDPH**, at the **IDPH's** sole discretion, are insufficient for any reason;

7.5.3. The **IDPH's** authorization to operate is withdrawn or there is a material alteration in the programs administered by the **IDPH**;

7.5.4. The **IDPH's** duties are substantially modified.

7.6. Remedies of MED MEDIA, INC. in Event of Termination by the IDPH. In the event of termination of this Contract for any reason by the **IDPH**, the **IDPH** shall pay only those amounts, if any, due and owing to MED MEDIA, INC. for services

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actually rendered up to and including the date of termination of the Contract and for which the **IDPH** is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of MED MEDIA, INC.'s claim. This provision in no way limits the remedies available to the **IDPH** under this Contract in the event of termination. However, the **IDPH** shall not be liable for any of the following costs:

7.6.1. The payment of unemployment compensation to MED MEDIA, INC. employees;

7.6.2. The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

7.6.3. Any costs incurred by MED MEDIA, INC. in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

7.6.4. Any taxes that may be owed by MED MEDIA, INC. in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

7.7. MED MEDIA, INC.'s Termination Duties. MED MEDIA, INC. upon receipt of notice of termination or upon request of the **IDPH**, shall:

7.7.1. Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting there from, any other matters the **IDPH** may require.

7.7.2 Immediately cease using and return to the **IDPH** any personal property or materials, whether tangible or intangible, provided by the **IDPH** to MED MEDIA, INC.

7.7.3. Comply with the **IDPH's** instructions for the timely transfer of any active files and work product produced by MED MEDIA, INC. under this Contract.

7.7.4. Cooperate in good faith with the **IDPH**, its employees, agents and CONTRACTORS during the transition period between the notification of termination and the substitution of any replacement CONTRACTOR.

7.7.5. Immediately return to the **IDPH** any payments made by the **IDPH** for services that were not rendered by MED MEDIA, INC.

SECTION 8. CONFIDENTIAL INFORMATION

8.1. Access to Confidential Data. MED MEDIA, INC. employees, agents and sub CONTRACTORS may have access to confidential data maintained by the **IDPH** to the extent necessary to carry out its responsibilities under the Contract. MED MEDIA, INC. shall presume that all information received pursuant to this Contract

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is confidential unless otherwise designated by the **IDPH**. MED MEDIA, INC. shall provide to the **IDPH** a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. MED MEDIA, INC. must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by MED MEDIA, INC. in connection with the performance of the Contract. MED MEDIA, INC. shall provide adequate supervision and training to its agents, employees and sub CONTRACTORS to ensure compliance with the terms of this Contract. The private or confidential data shall remain the property of the **IDPH** at all times.

- 8.2. No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the **IDPH**, either during the period of the Contract or thereafter. Any data supplied to or created by MED MEDIA, INC. shall be considered the property of the **IDPH**. MED MEDIA, INC. must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the **IDPH**.
- 8.3 Subpoena.** In the event that a subpoena or other legal process is served upon MED MEDIA, INC. for records containing confidential information, MED MEDIA, INC. shall promptly notify the **IDPH** and cooperate with the **IDPH** in any lawful effort to protect the confidential information.
- 8.4 Reporting of Unauthorized Disclosure.** MED MEDIA, INC. shall immediately report to the **IDPH** any unauthorized disclosure of confidential information.
- 8.5 Survives Termination.** MED MEDIA, INC.'s obligation under this Contract shall survive termination of this Contract.

SECTION 9 INDEMNIFICATION

9.1. By MED MEDIA, INC.:

MED MEDIA, INC. agrees to indemnify and hold harmless the State of Iowa and the **IDPH**, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the **IDPH**, related to or arising from:

9.1.1 Any breach of this Contract;

9.1.2 Any negligent, intentional or wrongful act or omission of MED MEDIA, INC. or any agent or sub CONTRACTOR utilized or employed by MED MEDIA, INC.

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- 9.1.3** MED MEDIA, INC. performance or attempted performance of this Contract, including any agent or sub CONTRACTOR utilized or employed by MED MEDIA, INC.;
- 9.1.4** Any failure by MED MEDIA, INC. to comply with the compliance with the Law provision of this Contract;
- 9.1.5** Any failure by MED MEDIA, INC. to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by MED MEDIA, INC. to conduct business in the State of Iowa;
- 9.1.6** Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
- 9.1.7** Any failure by MED MEDIA, INC. to adhere to the confidentiality provisions of this Contract.

9.2 Indemnification by the IDPH

- 9.2.1** The **IDPH** shall, only to the extent consistent with Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapter 669, indemnify and hold harmless MED MEDIA, INC. from and against any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments arising directly out of the negligence or wrongful acts or omissions of any employee of the **IDPH** while acting within the scope of the employee's office of employment in connection with the performance of this Contract.
- 9.2.2** At the option of the **IDPH**, MED MEDIA, INC. shall be represented by the Attorney General of the State or special counsel retained by the State or the Attorney General of the State with respect to any litigation brought by or against the **IDPH** or such persons with respect to any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments to which such persons may be subject and to which they are entitled to be indemnified hereunder.
- 9.2.3** If the **IDPH** makes any indemnity payments pursuant to this Section and the person to or on behalf of whom such payments are made thereafter collects any of such amounts from others, that person shall promptly repay such amounts to the **IDPH**, without interest.

- 9.3 Survives Termination.** Indemnification obligation of the parties shall survive termination of this Contract.

SECTION 10 INSURANCE

10.1 Insurance Requirements. MED MEDIA, INC., and any sub CONTRACTOR, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at MED MEDIA, INC.'s expense, insurance covering its work during the entire term of this Contract and any extensions or renewals. MED MEDIA, INC.'s insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to MED MEDIA, INC.'s performance of this Contract regardless of the date the claim is filed or expiration of the

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policy. The State of Iowa and the **IDPH** shall be named as additional insureds or loss payees, or MED MEDIA, INC. shall obtain an endorsement to the same effect, as applicable.

10.2 Types and Amounts of Insurance Required.

MED MEDIA, INC. shall be solely responsible for obtaining workers compensation insurance for its employees and agents and such other insurance as may be required by applicable laws. MED MEDIA, INC. agrees to carry, for the term of this Agreement, Liability, in the amounts stated in the chart below.

TYPE OF INSURANCE	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2 Million
	Product/Completed Operations Aggregate	\$1 Million
	Personal Injury	\$1 Million
	Each Occurrence	\$1 Million
Automobile Liability (including any auto, hired autos, and non-owned autos)	Combined Single Limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Workers Compensation and Employer Liability	As required by Iowa law	As required by Iowa law
Property Damage	Each Occurrence	\$1 Million
	Aggregate	\$1 Million

10.3. Certificates of Coverage. All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the **IDPH**. MED MEDIA, INC. shall submit certificates of insurance, which indicate coverage and notice provisions as required by this Contract, to the **IDPH** upon execution of this Contract. The certificates shall be subject to approval by the **IDPH**. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the **IDPH**. Approval of the insurance certificates by the **IDPH** shall not relieve MED MEDIA, INC. of any obligation under this Contract.

Section 11 – Reserved.

SECTION 12. PROJECT MANAGEMENT AND REPORTING

12.1. Project Manager. At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the services being provided under this Contract.

12.2. Reports. At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. For as long as a problem remains unresolved, written reports shall identify:

12.2.1. Any event not within the control of MED MEDIA, INC. or the **IDPH** that accounts for the problem;

12.2.2. Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;

12.2.3. Damages incurred as a result of any party's failure to perform its obligations under this Contract; and

12.2.4. Any request or demand for services by one party that another party believes are not included within the terms of this Contract.

12.3. Problem Reporting Omissions. The **IDPH's** acceptance of a problem report shall not relieve MED MEDIA, INC. of any obligation under this Contract or waive any other remedy under this Contract or at law or equity that the **IDPH** may have. The **IDPH's** failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

12.4. Change Order Procedure. The **IDPH** may at any time request a modification to the Scope of Services using a Change Order. The following procedures for a change order shall be followed:

12.4.1. Written Request. The **IDPH** shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Services.

12.4.2. MED MEDIA, INC.'s Response. MED MEDIA, INC. shall submit to the **IDPH** a time and cost estimate for the requested Change Order within five (5) business days of receiving the Change Order Request.

12.4.3. Acceptance of MED MEDIA, INC.'s Estimate. If the **IDPH** accepts the estimate presented by MED MEDIA, INC. within five (5) business days of

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receiving MED MEDIA, INC.'s response, MED MEDIA, INC. shall perform the modified services subject to the time and cost estimates included in MED MEDIA, INC.'s response. MED MEDIA, INC.'s performance and the modified services shall be governed by the terms and conditions of this Contract.

- 12.4.4. Adjustment to Compensation.** The parties acknowledge that a Change Order for this Contract may or may not entitle MED MEDIA, INC. to an equitable adjustment in MED MEDIA, INC.'s compensation or the performance deadlines under this Contract.

SECTION 13. LIMITATION OF LIABILITY

MED MEDIA, INC. expressly acknowledges that the Software Development and Implementation Services is subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the Services MED MEDIA, INC. shall not hold the **IDPH** liable in any manner for the resulting changes. The **IDPH** shall use best efforts to provide thirty (30) days' written notice to MED MEDIA, INC. of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the **IDPH's** right to terminate the Contract pursuant to the termination provisions.

SECTION 14. WARRANTIES

14.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law. All warranties made by MED MEDIA, INC. in all provisions of this Contract and the Proposal by MED MEDIA, INC., whether or not this Contract specifically denominates MED MEDIA, INC. 's promise as a warranty or whether the warranty is created only by MED MEDIA, INC. 's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the **IDPH**, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by MED MEDIA, INC. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

14.2 Concepts, Materials, and Works Produced. MED MEDIA, INC. represents and warrants that all the concepts, materials and Works produced, or provided to the **IDPH** pursuant to the terms of this Contract shall be wholly original with MED MEDIA, INC. or that MED MEDIA, INC. has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and Works. MED MEDIA, INC. represents and warrants that the concepts, materials and Works and the **IDPH's** use of same and the exercise by the **IDPH** of the rights granted by this Contract shall not infringe upon any other work, other than material provided by the Contract to MED MEDIA, INC. to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other

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rights of any person, firm or corporation or other entity. MED MEDIA, INC. represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by MED MEDIA, INC. and any other materials, Works and methodologies used in connection with providing the services contemplated by this Contract.

14.3 Professional Practices. MED MEDIA, INC. represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

14.4 Conformity with Contractual Requirements. MED MEDIA, INC. represents and warrants that the Works will appear and operate in conformance with the terms and conditions of this Contract.

14.5 Authority to Enter into Contract. MED MEDIA, INC. represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the **IDPH**.

14.6 Obligations Owed to Third Parties. MED MEDIA, INC. represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by MED MEDIA, INC. pursuant to this Contract are or will be fully satisfied by MED MEDIA, INC. so that the **IDPH** will not have any obligations with respect thereto.

14.7 Title to Property. MED MEDIA, INC. represents and warrants that title to any property assigned, conveyed or licensed to the **IDPH** is good and that transfer of title or license to the **IDPH** is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

14.8 Industry Standards. MED MEDIA, INC. represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the standards in the **Information Technology industry** in the performance of this Contract.

14.9 Ownership. All rights, title and interest, including the right to make derivative works, to all written materials, originated and prepared for IDPH under and during the term of this agreement, shall belong to IDPH. IDPH shall retain ownership of the Licensed Software and Documentation, including the right to make derivative works, and MED MEDIA, INC. does not acquire any rights, titles or interest in or to the Licensed Software and Documentation, except as otherwise proved in the Agreement. However, MED MEDIA, INC. shall own all rights, title and interest (including all associated intellectual property rights) in and to all Upgrades that are not a part of this Agreement and which are created, made or performed by MED MEDIA, INC. for persons or entities that are not a party to this Agreement.

FNS reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use and authorize others to use for Federal Government Purposes, such as software modifications, and documentation.

SECTION 15. CONTRACT ADMINISTRATION

15.1 Independent CONTRACTOR. The status of MED MEDIA, INC. shall be that of an independent CONTRACTOR. MED MEDIA, INC., its employees, agents and any sub CONTRACTORs performing under this Contract are not employees or agents of the State of Iowa or any **IDPH**, division or department of the state. Neither MED MEDIA, INC. nor its employees shall be considered employees of the **IDPH** or the State of Iowa for federal or state tax purposes. The **IDPH** will not withhold taxes on behalf of MED MEDIA, INC. (unless required by law).

15.2 Incorporation of Documents. The RFP, and amendments and written responses to bidders' questions (collectively RFP) and MED MEDIA, INC.'s Proposal submitted in response to the RFP, form the Contract between MED MEDIA, INC. and the **IDPH** and are incorporated herein by reference. The parties are obligated to perform all services described in the RFP and Proposal unless the Contract specifically directs otherwise.

15.3 Order of Priority. .

In the event of a conflict between the contract and other documents, the order of precedence in descending order is as follows:

- 1) This Contract
- 2) RFP BD80300S260 and its amendments
- 3) MED MEDIA's Proposal and response to questions.

15.4 Compliance with the Law. MED MEDIA, INC., its employees, agents, and sub CONTRACTORs shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as sub CONTRACTORs or suppliers. MED MEDIA, INC., its employees, agents and sub CONTRACTORs shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.

15.5 Amendments. This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties.

15.6 Third Party Beneficiaries. There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the States of Iowa and North Dakota, the **IDPH** and MED MEDIA, INC..

15.7 Choice of Law and Forum. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa. This provision shall not be construed as waiving any

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immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the **IDPH** or the State of Iowa.

15.8 Assignment and Delegation. This Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For the purpose of construing this clause, a transfer of a controlling interest in MED MEDIA, INC. shall be considered an assignment.

15.9 Use of Third Parties. The **IDPH** acknowledges that MED MEDIA, INC. may contract with third parties for the performance of any of MED MEDIA, INC.'s obligations under this Contract. All subcontracts shall be subject to prior approval by the **IDPH**. MED MEDIA, INC. may enter into these contracts to complete the project provided that MED MEDIA, INC. remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of MED MEDIA, INC. under this Contract shall also apply to the sub CONTRACTORS. The **IDPH** shall have the right to request the removal of a sub CONTRACTOR from the Contract for good cause.

15.10 Integration. This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

15.11 Headings or Captions. The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

15.12 Not a Joint Venture. Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent CONTRACTOR contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

15.13 Joint and Several Liability. If the CONTRACTOR is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

15.14 Supersedes Former Contracts or Agreements. This Contract supersedes all prior Contracts or Agreements between the **IDPH** and MED MEDIA, INC. for the services provided in connection with this Contract.

15.15 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the **IDPH** and MED MEDIA, INC., failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

15.16 Notice

15.16.1 Any and all legal notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

If to the **IDPH**: _____

If to **MED MEDIA**: _____

15.16.2 Each such notice shall be deemed to have been provided:

15.16.2.1 At the time it is actually received; or,

15.16.2.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

15.16.2.3 Within five (5) days after it is deposited the U.S. Mail in the case of registered U.S. Mail.

15.16.2.4 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

15.17 Cumulative Rights. The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

15.18 Severability. If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

15.19 Time is of the Essence. Time is of the essence with respect to the performance of the terms of this Contract.

15.20 Authorization. Each party to this Contract represents and warrants to the other parties that:

15.20.1 It has the right, power and authority to enter into and perform its obligations under this Contract.

15.20.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

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15.21 Successors in Interest. All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

15.22 Record Retention and Access. MED MEDIA, INC. shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the IDPH throughout the term of this Contract for a period of at least **five (5)** years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. MED MEDIA, INC. shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of MED MEDIA, INC. relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. MED MEDIA, INC. shall not impose a charge for audit or examination of MED MEDIA, INC. books and records.

15.23 Solicitation. MED MEDIA, INC. warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

15.24 Obligations Beyond Contract Term. This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the IDPH and MED MEDIA, INC. incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

15.25 Counterparts. The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

15.26 Additional Provisions. The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

15.27 Further Assurances and Corrective Instruments. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

15.28 Delay or Impossibility of Performance. MED MEDIA, INC. shall not be in default under this Contract if performance is delayed or made impossible by an act of God, flood, fire or similar events. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of MED MEDIA, INC. If delay results from a subcontractor's conduct, negligence or failure to perform, MED MEDIA,

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INC. shall not be excused from compliance with the terms and obligations of this Contract.

15.29 Suspension and Debarment. MED MEDIA, INC. certifies pursuant to 31 CFR Part 19 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency. MED MEDIA, INC. shall execute the certification regarding debarment attached as Exhibit C.

15.30 Lobbying Restrictions. MED MEDIA, INC. shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any sub CONTRACTOR fully complies with all certification and disclosure requirements. MED MEDIA, INC. shall execute the certification regarding debarment attached as Exhibit A.

15.31 Tobacco Smoke Prohibited

15.31.1 Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. Federal programs include grants, cooperative agreements, loans or loan guarantees and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where WIC food instruments are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.

15.31.2 The Contractor affirms that discrimination is prohibited in employment practices on the basis of race, color, national origin, sex, age, or disability.

15.32 Certified Audits. Local governments and non-profit subrecipient entities that expend \$300,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the Agency if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. If an audit report is not

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required to be submitted per the criteria above, the subrecipient must provide written notification to the Agency that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. See A-133 Section 21 for a discussion of subrecipient versus Med Media relationships.

15.33 Drug Free Work Place. MED MEDIA, INC. shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations. MED MEDIA, INC. shall execute the certification regarding a drug free workplace attached as Exhibit D and provide the original certificate to the Agency when it executes this Contract. MED MEDIA, INC. agrees to abide by the terms of the certification. The certification is a material representation of fact upon which the Agency relied when making or entering into this Contract and any extension or renewal thereof.

15.34 DISPUTES. The parties shall agree to meet informally to solve any operating or Contract disputes (except as otherwise specifically provided for in this agreement), and to mediate the dispute prior to filing a court action (except an action for emergency injunctive relief). A mediator may be established and the costs of such mediation shall be shared equally between the parties. The parties are encouraged to resolve their operational disputes at the project manager level.

ADDITIONAL PROVISIONS:

SECTION 16 LIQUIDATED DAMAGES

16.1 The parties acknowledge and agree that: (i) any delay or failure by MED MEDIA, INC. to timely perform its obligations in accordance with this Agreement will delay and disrupt IDPH'S operations and result in significant loss and damages to IDPH, (ii) IDPH will incur major costs to maintain the functions that would have otherwise been performed by MED MEDIA, INC. as a result of such delay or failure; and (iii) the goods and services to be provided under this Agreement are not readily and immediately available to IDPH. Furthermore, the parties acknowledge and agree that it may be extremely impractical and difficult to determine actual damages which IDPH may sustain. Therefore, the parties understand and agree that the following provisions in this Section 16 describe the liquidated damages MED MEDIA, INC. shall pay to IDPH as a result of non-performance hereunder by MED MEDIA, INC. and that such liquidated damages are reasonable.

16.1.1 MED MEDIA, INC. shall pay as liquidated damages \$1,000 a day for each and every day or portion thereof that MED MEDIA, INC. fails to implement the system into the production environment (Deliverable 32: Software and Hardware Installation) in accordance with the then current IDPH approved Project Plan.

16.1.2 The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the IDPH may have under this Agreement for MED MEDIA, INC.'s breach of this Agreement, including without limitation, the IDPH's right to terminate this Agreement, and shall be

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entitled in its discretion to recover actual damages caused MED MEDIA, INC.'s failure to perform its obligations under this Agreement. The assessment of liquidated damages shall be in addition to and not in lieu of such other remedies as may be available to the IDPH. It is expressly agreed that the waiver of any liquidated damages due IDPH shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages. Any failure by IDPH to demand liquidated damages within any period of time shall not constitute a waiver of such claim by the IDPH.

- 16.1.3 Amounts due MED MEDIA, INC. as liquidated damages may be deducted by the IDPH from any money payable to MED MEDIA, INC. under this Agreement, or the IDPH may bill MED MEDIA, INC. as a separate item therefore or otherwise request in writing MED MEDIA, INC. 's payment of liquidated damages, but in no event later than thirty (30) days after the date of IDPH's bill or other written request for liquidated damages. At the IDPH's option, IDPH may obtain payment of assessed liquidated damages through one (1) or more claims upon any performance bond furnished MED MEDIA, INC.

16.2 Exception

1. Except with respect to defaults of sub-contractors, the CONTRACTOR shall not be liable for liquidated damages when delays arise out of causes beyond the control and without the fault or negligence of the CONTRACTOR or the Department. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods epidemics, quarantine restrictions, strikes, freight embargoes; but in every case the delays must be beyond the control and without the fault or negligence of the CONTRACTOR or the Department.
2. If delays are caused by the default of a sub-contractor, and if such default arises out of causes beyond the control of both the CONTRACTOR and sub-contractor or the Department and its sub-contractor, and without the fault or negligence of any of them, the CONTRACTOR shall not be liable for liquidated damages, unless the services to be furnished by the subcontractors were obtainable from other sources in sufficient time to permit the CONTRACTOR or the Department to meet the required performance schedule.
3. IDPH and MED MEDIA, INC. could mutually agree to a delay in schedule that would not result in liquidated damages.

SECTION 17 EXECUTION

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other goods and valuable consideration, the receipt, adequacy and legal sufficiency

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of which are hereby acknowledged, the parties have entered into the above Contract and have caused their duly authorized representatives to execute this Contract.